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25-400-1

10-10-10

23 October 1953

MEMORANDUM FOR: Acting Deputy Director (Administration)
SUBJECT : Additional Financial Security for Hazardous Operations
REFERENCE : Memorandum for the DD/A from Chief of Administration, DD/P, dated 7 July 1953, same subject

1. The reference requested that an Agency policy be established whereby employees or their dependents would be reimbursed for the loss sustained, where although the employees' injury or death occurred in the performance of duty, the circumstances were such as to void their personal insurance coverage.

2. This matter is not new to the Agency. It has been considered previously in connection with the Career Service Program. The problem has also been noted obliquely in several opinions by this office. On one occasion, we considered the question of the Government's liability in the event an employee sustained injury or death under circumstances not compensable under normal insurance coverage. We concluded that, because of the express limitations prescribed in the Federal Employees' Compensation Act (39 Stat. 742; 5 USCA § 751), the Government had no further responsibility on this account. A copy of our opinion is attached as Tab A. On still another occasion, we were confronted with a question regarding the propriety of using Agency funds to pay the added cost of an aviation clause to cover an area of risk not included in an agent's policy. We noted that, whereas the Armed Forces could order an individual to undertake a hazardous assignment, the Agency had to rely on volunteers. We concluded, that if it was determined that this difference created a situation peculiar to CIA, there would be no legal objection to using confidential funds to make the payment. It must be noted, however, that that opinion rested on the singular facts presented and indicated that a specific determination should be made. A copy of that opinion is attached as Tab B, for easy reference.

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3. We readily appreciate the concern generated by the ever existing possibility that employees may have their commercial insurance canceled due to the risks they undertake in the execution of their assignments. But at the same time, we are of the opinion that this unfortunate situation may not be remedied by administrative fiat. As has been indicated before, to establish a policy of the magnitude contemplated on an Agency-wide basis, specific legislative authority is required.

4. It is understood that the Compensation Act has been examined and that while the scope of its benefits are appreciated, it has been discarded as being an inadequate solution. However, we suggest that no attempt be made to supplement the benefits now available under the Act -- which we are advised far exceed those which any commercial coverage could provide in the absence of prohibitive premiums -- by the formulation of a policy which could result in divesting Agency employees of their present entitlements. We have concern in this regard, because Section 757(a) of the Act provides in part:

" . . . Provided, That whenever any person is entitled to receive any benefits under sections 751-791 and 793 of this title by reason of his injury, or by reason of the death of an employee, as defined in section 790 of this title, and is also entitled to receive from the United States any payments or benefits (other than the proceeds of any insurance policy), by reason of such injury or death under any other Act of Congress, because of service by him (or in the case of death, by the deceased) as an employee, as so defined, such person shall elect which benefits he shall receive. Such election shall be made within one year after the injury or death, or such further time as the Secretary may for good cause allow, and when made shall be irrevocable unless otherwise provided by law."

In an informal discussion with the Bureau of Employees' Compensation, regarding the effect on a beneficiary's entitlements if Government funds were used to pay an employee's premiums to WAEPA, we were advised that a conflict would result requiring an election; and that while an employee's beneficiary would be entitled to either FECA or the WAEPA benefits, he could not have both. It is our opinion that a similar ruling would be rendered in the event the Agency used Government funds to reimburse employees and their dependents for loss sustained due to cancellation of commercial insurance policies.

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5. The possibility that Agency personnel may have their commercial policies voided or be unable to obtain coverage at all, is not a problem unique to CIA. We understand that a similar one confronts the Armed Forces personnel, and that in the absence of the Department of Defense receiving statutory authority to undertake some sort of an indemnification program, it likewise remains unsolved. But this unfortunate situation has not gone unnoticed. It has received specific mention in the Report of the Strauss Commission on Incentive-Hazardous Duty and Special Pay, dated March 1953. This Commission had been established by the Secretary of Defense to investigate and evaluate the various types of pay differentials. Among its recommendations which it deemed of paramount importance to the high morale and effectiveness of the Armed Forces were:

"1. That survivors of military members who lose their lives in the service of their country by being killed in action, dying of wounds, or as a direct result of voluntarily engaging in a hazardous occupation, be authorized double the normal indemnity currently authorized, i.e., \$20,000 in lieu of \$10,000.

"2. That the Government make commercial-type life insurance available at reasonable premium rates to those military members, who by reason of hazardous military assignment are unable to secure appropriate life insurance from commercial firms."

(Commission Report, page 11)

We have no information regarding the status of these recommendations.

6. While it is our present opinion that the Agency may not establish a policy of the nature and scope suggested, for the purpose of indicating a probable course of action, your attention is invited to the finding of the Strauss Commission to the effect that pay, not free insurance, provided the greater incentive to engage in hazardous duties. In this regard, the Commission stated:

"One alternative to differential pays which has been mentioned is the provision of free additional Government insurance, since the additional cost of commercial life insurance — even its unavailability in some instances is cited as one reason for these pays.

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"We interviewed hundreds of officers and men, veterans of World War II and Korea, drawn at random from all of the services to determine whether such insurance would alone provide an incentive to engage and remain in hazardous duties.

"The Commission learned that insurance was a personal matter, greatly dependent upon the individual's status and family responsibilities. To the young, single man insurance did not represent any desirable gain. To the older man with dependents it offered some inducement. The personnel were agreed, however, that free insurance alone would not provide the necessary incentive for them to continue performance in hazardous duties. The majority stated that although pay was by no means the sole incentive, that it was a most important consideration. (Emphasis supplied)

(Commission Report, page 9)

7. With reference to paragraph 3 of the subject reference (the application of the Federal Employers Compensation Act to cases where injury or loss of life occurs under official circumstances which void personal insurance coverage carried by such employees), Section 1 of the Act provides:

"... That the United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death."

Hazardous duty does not qualify the coverage of the Act. The fact that the employee's duty may have been "hazardous" as opposed to "non-hazardous" is not material to the question of eligibility. In this respect the sole criterion is whether the disability or death of the employee resulted "from personal injury sustained while in the performance of his duty."

8. The routing sheet forwarding the subject reference to this office suggested the possibility of a contractual type agreement between the Agency and the employee entering upon hazardous duties, that would set forth the proposed indemnification. As is discussed at paragraph 4, above, an agreement by the Agency to reimburse the employee for any loss sustained due to voiding of personal insurance coverage, may well require an

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election between this indemnification and the benefits provided by the Federal Employees' Compensation Act. In consequence, it is the opinion of this office that a contractual agreement, such as suggested, between the Agency and employees entering hazardous duty assignments would not solve the problem presented.

9. While at present the benefits available to Agency employees are deemed to be limited to those provided by the Act and WAEPA, the Insurance Task Force, with the assistance of this office, is currently studying all aspects of insurance coverage, including those presented by hazardous duty assignments. Its recommendations are being prepared at this time.

OGC/RJB:tkl-apf

LAWRENCE R. HOUSTON
General Counsel

2 Att - Tab A
Tab B

cc: 1 - OGC subj ✓
1 - OGC chrono
1 - vital
1 - legal
1 - OGC/RJB file

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